

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: MIKE COADY d/b/a SILVER LAKE FINISHING Fairmont, Minnesota	ADMINISTRATIVE CONSENT ORDER NO. 2007-AFO-07
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TO: Mike Coady
Silver Lake Finishing
2484 50th Street
Fairmont, Minnesota 56031

I. SUMMARY

This administrative consent order is entered into between Mike Coady d/b/a Silver Lake Finishing (Mr. Coady) and the Iowa Department of Natural Resources (DNR) for the purpose of resolving the issues surrounding the use of a non-certified manure applicator. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Michelle Johnson, Field Office 2
Iowa Department of Natural Resources
2300 15th Street SW
Mason City, Iowa 50401
Phone: 641/424-4073

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:

Director, Iowa Dept. of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 and the rules adopted or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa

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Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Mike Coady operates two swine confinement feeding operations, both of which are named Silver Lake Finishing. One facility is located in the NE ¼, Section 13, Eagle Township, Kossuth County, Iowa and the other facility is located in the SW ¼, Section 35, Silver Lake Township, Martin County, Minnesota. The Iowa facility was constructed in 1997 and is a 4,000 head finisher operation. The Minnesota facility was constructed in 1996 and is a 5,000 head finisher operation. The manure from the Minnesota facility has been applied to ground in Iowa.

2. On November 6, 2006, Mr. Coady reported a manure release to the Kossuth County Emergency Management Office and DNR Field Office 2. The manure release was located at 30th Avenue and 510th Street north of Swea City, Iowa. Mr. Coady stated the manure release occurred when John Sangren, the manure applicator, took a corner too short, causing the tank to roll into the road ditch and manure to spill out. Jim Kelley, Kossuth County Emergency Management, responded to the manure release. There were two areas of the ditch that were excavated to retain the manure. The manure was then pumped and land applied. It did not appear that any waters of the state were impacted. The manure involved in the release originated from Mr. Coady's Minnesota facility. Mr. Coady stated that Mr. Sangren worked part-time for Richard and Paul Hein, none of the three were certified manure applicators.

3. On December 12, 2006, Mr. Coady was issued a Notice of Violation letter for the use of a non-certified applicator. The letter indicated the matter was being referred for further enforcement.

4. Mr. Coady has been issued a prior administrative order for manure application and certification violations. Administrative Order No. 2002-AFO-37 required Mr. Coady to ensure that all manure from his confinement feeding operation was applied by a certified applicator and to apply all manure in accordance with DNR rules.

IV. CONCLUSIONS OF LAW

1. Iowa Code sections 459.603 and 455B.191 state that any person who violates an order shall be subject to a civil penalty. Administrative Order No. 2002-AFO-37 required Mr. Coady to ensure that all manure from his confinement feeding operation was applied by a certified applicator and to apply all manure in accordance with DNR rules. Mr. Coady hired Mr. Sangren, a non-certified applicator. The above-mentioned facts indicate Mr. Coady violated Administrative Order No. 2002-AFO-37.

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V. ORDER

THEREFORE, the DNR orders and Mr. Coady agrees to do the following:

1. Mr. Coady shall pay a penalty of \$4,000.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code section 455B.191 authorize the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty. The administrative penalty assessed by this administrative consent order is \$4,000.00. The administrative penalty is determined in accordance with the following:

Economic Benefit – The failure of Mr. Coady to comply with the previous administrative order has allowed him to achieve an economic benefit. Additionally, Mr. Coady saved time and money by allowing a non-certified applicator to apply manure. Therefore, \$500.00 is assessed for this factor.

Gravity of the Violation – Mr. Coady's failure to comply with the previous administrative order threatens the integrity of the animal feeding operation program. The administrative order requirements were to ensure that manure was properly applied from Mr. Coady's facilities. There was a release of manure that had the potential to cause water quality violations. Based on the above considerations, \$1,500.00 is assessed for this factor.

Culpability – All animal feeding operation owners and operators have a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that the operation is subject to DNR's rules. Mr. Coady had a previous administrative order for certification violations and was ordered to use only certified manure applicators in the future. Mr. Coady knowingly hired a non-certified applicator. Based on the above considerations, \$2,000.00 is assessed for this factor.

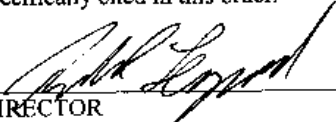
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VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly by and with the consent of Mr. Coady. For that reason, Mr. Coady waives the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Failure to comply with this order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order. The DNR reserves the right to bring enforcement action, including penalties, or to request that the attorney general initiate legal action to address other violations not described in Section "IV. Conclusions of Law" of this administrative consent order but which may arise from the facts summarized in Section "III. Statement of Facts" of this administrative consent order. DNR specifically reserves the right to pursue enforcement action, including penalties, for any current violations not specifically cited in this order.



DIRECTOR
Iowa Department of Natural Resources

Dated this 8 day of
March, 2007.



Mike Coady

Dated this 15 day of
Feb, 2007.

No Central Office File Number; DNR Field Office 2; Kelli Book; Ken Hessenius; Gene Tinker; EPA; VIII.D.4